

JUDICIAL PRACTICES AND PROCEDURES

BANKRUPTCY JUDGE STEPHEN RASLAVICH

Judge Raslavich assumed his position as a Bankruptcy Judge for the Eastern District of Pennsylvania on October 29, 1993. Judge Raslavich is a former Certified Public Accountant and practicing attorney. Prior to his appointment, he served for many years on the private panel of Chapter 7 Bankruptcy Trustees for the Bankruptcy Court of the Eastern District of Pennsylvania. Judge Raslavich is a graduate of the Villanova University School of Law (1980) and he received his undergraduate degree from the Wharton School of the University of Pennsylvania (1975).

PRELIMINARY GENERAL MATTERS

1. Correspondence With the Court

Judge Raslavich generally discourages unsolicited correspondence from counsel. Judge Raslavich will, however, occasionally invite and/or direct counsel to report on the status of matters via letters. Judge Raslavich discourages correspondence from counsel beyond this and in particular prefers counsel not to raise, via correspondence, matters which should otherwise be the subject of motion practice.

2. Communications With Law Clerks

Judge Raslavich permits counsel to speak directly with his Law Clerk subject to the limitations that law clerks are not permitted to give legal advice or discuss the merits of pending cases. Scheduling matters should ordinarily be taken up in the first instance with the Judge's Courtroom Deputy, or in the alternative with his Judicial Assistant.

3. Telephone Conferences and Use of Facsimile Machines

Judge Raslavich will liberally entertain requests for telephone conference calls provided all pertinent parties are available to participate. Judge Raslavich insists that counsel not correspond with him via facsimile unless the same is requested and approved in advance.

4. Pro Hac Vice Admissions

Judge Raslavich is very liberal with pro hac vice admissions, and will allow such request to be made orally or in writing.

5. Chambers Copies of Filed Papers

Judge Raslavich will accept courtesy or chambers copies of filed papers, but stresses to the Bar that the same is in no way required absent specific request on his part.

LITIGATION GENERALLY

1. *Continuances and Extensions*

a. *General Policy*

Judge Raslavich is generally liberal with requests for continuances where all parties are in agreement. Such requests should be made in the first instance via letter (if time permits) or telephone through the Judge's Courtroom Deputy, and in the alternative to the Judge's Judicial Assistant.

b. *Need for Filing of Formal Stipulation or Motion*

If all parties are in agreement, requests for continuances will ordinarily be granted as of course without the need for the filing of a formal stipulation or motion. If a request for a continuance is opposed, the Judge expects counsel to raise the issue via conference call. Barring that, a written motion should be presented, sufficiently in advance of the hearing to allow the same to be disposed of prior to the originally scheduled date. If necessary, a request for expedited consideration should be made.

c. *Need for Court Appearance*

Judge Raslavich may sometimes dispose of a contested continuance request on the papers alone. Counsel will be advised in advance if a court appearance will be necessary.

2. *Proposed Findings of Fact and Conclusions of Law*

a. *Contested Matters/Adversary Proceedings*

Judge Raslavich does not require proposed findings of fact and conclusions of law unless specifically so indicated at the conclusion of proceedings in court. Judge Raslavich will generally permit the filing of the same, upon request. Similarly, the Judge welcomes memoranda of law from the parties, and will generally refrain from deciding matters from the bench, if the parties desire an opportunity to brief certain issues.

3. *Reading of Material Into the Record*

Judge Raslavich will usually not permit the reading of substantial material into the record.

4. *Settlements*

a. *General Approach*

Judge Raslavich will only become involved in settlement discussion at the request of all parties in interest. Upon such request, he will do so, but only to the limited extent that the same will not jeopardize his role as fact finder if settlement discussions are unsuccessful.

b. *Referral of Settlement Negotiations to Another Bankruptcy Judge*

When all parties in interest are in agreement and mediation is either inappropriate or has been unsuccessful, settlement conferences can be arranged with another Bankruptcy Judge.

c. *Need for Court Appearances*

Settlements can usually be reported to Judge Raslavich's Courtroom Deputy, or in the alternative, to his Judicial Assistant, and the necessary motions to seek court approval, pursuant to Federal Bankruptcy Rule 9019, can be filed without a court appearance. Counsel will be advised of any exceptions.

CONTESTED MATTER PRACTICE AND PROCEDURE

1. *Filing Memoranda of Law/Briefs*

a. *Before Hearing*

Judge Raslavich will consider pre-hearing briefs, however, counsel are again advised that the same are not required.

b. *After Hearing*

Memoranda are required only if so indicated at the conclusion of proceedings in Court. Parties desiring to submit post-hearing Memoranda will ordinarily be permitted to do so

c. Reply and Surreply Memoranda/Briefs

Reply and surreply memoranda/briefs will be permitted if approved in advance at the time a briefing schedule is established. Unsolicited extra briefs" are viewed as improper.

2. Scheduling of Expedited Hearings

Judge Raslavich requires conformity with Local Bankruptcy Rule 5070-1(f) in connection with the presentation of requests for expedited consideration. If approved, counsel will generally be advised of the expedited hearing date via telephone conference from the Courtroom Deputy or the Judge's Judicial Assistant in order to permit counsel to promptly make service on opposing parties.

3. Rule 52(c) Motions

Such motions may be made orally or in writing.

4. Examination of Witnesses or Argument by More Than One Counsel

Judge Raslavich will ordinarily permit more than one attorney for a party to examine different witnesses or argue different points of law if there is a valid reason for this approach.

5. Examination of Witnesses Beyond Redirect and Cross

Judge Raslavich generally permits further examination of witnesses after redirect and recross have been completed, but will curtail examinations which become repetitive or which are simply cumulative.

6. Presentation of Evidence

a. Use of Rule 43(e) Affidavits

Judge Raslavich does not generally favor use of affidavits in lieu of testimony, but he may consider same upon agreement of counsel or, where out of town witnesses are concerned, and cross examination can be held via telephone conference call.

b. Marking of Exhibits and Number of Copies

Judge Raslavich appreciates counsel pre-marking exhibits and exchanging copies in advance. A bench copy of exhibits is appreciated, but is not required absent advance notice thereof.

c. Offering Exhibits in Evidence

Judge Raslavich prefers that all of a party's exhibits be offered at the conclusion of that party's case, but is flexible on this point.

d. Need for Presentation of Evidence if Uncontested

Judge Raslavich will rarely require presentation of evidence in support of uncontested matters. There are certain exceptions, however, such as when the moving party must affirmatively demonstrate "cause for relief" or when the moving party requests that certain findings be included in a proposed form of order, which findings the Court is unable to make on the basis of the pleadings alone. In these instances the Judge will normally accept a proffer or affidavit.

ADVERSARY PROCEEDINGS

1. Discovery Matters

a. Length of Discovery Period and Extensions

It is Judge Raslavich's practice to establish a discovery schedule via a pre-trial order. The deadlines set forth in such order are meant to apply, but extensions will normally be granted given consent and cause shown.

b. Discovery Conferences and Dispute Resolution

Judge Raslavich will entertain conference calls for the purpose of resolving discovery disputes. Monetary sanctions, however, will always require the presentation of a formal motion.

c. Confidentiality Agreements

Judge Raslavich will approve confidentiality agreements or orders subject to the limitations of statutory and common law.

d. Expert Witnesses

Judge Raslavich requires the advance identification of expert witnesses in the joint pretrial statement to be prepared in conformity with his standard pretrial order. (copy attached)

2. Pretrial Conferences

Judge Raslavich infrequently schedules pretrial conferences at his own initiative, but will entertain requests for the same for cause shown.

3. Filing of Memoranda and Briefs

a. Pretrial

Pretrial memoranda are appreciated, however, counsel are advised that the same are unnecessary unless specifically requested.

b. Post-trial

Post-trial memoranda are necessary only where specifically requested by the Court, however, Judge Raslavich will liberally approve requests from the parties to submit the same. Judge Raslavich will generally permit the briefing schedule to commence after receipt of the transcript in the regular course of business.

c. Reply and Surreply Memoranda and Briefs

The complete briefing schedule will ordinarily be established at the conclusion of trial proceedings. Briefs not otherwise identified at that time should not be submitted.

4. Mediation

Judge Raslavich will liberally assign disputes to mediation at the request of the parties. Barring that, he reviews matters before him for possible referral to mediation on a case-by-case basis. Judge Raslavich will not insist that parties attempt mediation against their will, nor does he require parties to explain a decision not to participate in mediation.

ARBITRATION

1. General Approach to Arbitration

Proceedings will be assigned to compulsory arbitration in accordance with Local Bankruptcy Rule 9019.2.

2. Scheduling of Trial De Novo

Once a trial *de novo* is demanded, Judge Raslavich will generally issue a pre-trial order directing the filing of a joint pretrial statement and setting a date for trial.

TRIAL PROCEDURE

1. Scheduling of Cases

Motions are assigned a hearing date in accordance with Local Bankruptcy Rule 5070-1. Adversary proceedings are assigned a trial date via a pre-trial scheduling order after the pleadings are closed. The lead time for trial fluctuates depending upon the size of Judge's calendar, however, every attempt is made to provide counsel with a prompt hearing date.

2. Matters Involving Out-of-Town Parties or Witnesses

Judge Raslavich endeavors to be as flexible as possible in matters involving out-of-town parties or witnesses.

3. Side Bars

Side-bar conferences are discouraged but will be entertained when necessary.

4. In Limine Motions

Judge Raslavich has no fixed practice regarding *in limine* motions and handles them instead on a case-by-case basis.

5. Opening Statements and Summations

Judge Raslavich will permit opening and closing statements, but will sometimes suggest that the same be waived where pretrial memoranda have been submitted and/or post-trial memoranda are contemplated.

6. *Examination of Witnesses Out of Sequence*

Judge Raslavich is very flexible in allowing witnesses to be called out of turn for convenience.

7. *Videotaped Testimony*

Judge Raslavich will permit the use of videotaped testimony to the extent agreed to by all parties or as allowed by the Federal Rules of Bankruptcy Procedure.

INJUNCTIONS

1. *Hearings on Motions for Temporary Restraining Orders or Preliminary Injunctions*

Hearings on motions for temporary restraining orders or preliminary injunctions are viewed and scheduled in the same manner as requests for expedited consideration in contested matters. Requests for expedited discovery are treated in the same fashion.

2. *Proposed Facts and Conclusions of Law*

As in contested matters, the Judge does not generally require such submissions absent specific advice to the parties at the conclusion of trial proceedings.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE		: CHAPTER	
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	DEBTOR	: BANKRUPTCY No. SR	
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	PLAINTIFF	:	
V.		:	
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	DEFENDANT	: ADVS.	
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PRETRIAL ORDER

AND NOW, this day of 2001, the Plaintiff(s) having filed an adversary proceeding and the Defendant(s) having filed a responsive pleading which warrants the entry of a pretrial scheduling order, it is hereby:

ORDERED, that:

1. On or before a date 21 days after entry of this order, counsel shall have held and concluded the mandatory discovery conference pursuant to Fed.R.Civ.P. 26(f), incorporated into these proceedings by Fed.R.Bankr.Pro. 7026. The parties shall consider, as part of their deliberations on how to proceed with discovery, the discovery and pretrial schedule detailed below in this order.

2. Within 14 days after the conclusion of the parties' discovery conference, should the parties propose a discovery or pretrial schedule that differs from the one below, they shall file with the Bankruptcy Court a report on discovery, as mandated by Fed.R.Civ.P. 26(f). The parties

shall detail those differences in their Rule 26(f) report, along with the reasons therefore. The Court may, when appropriate, order a hearing based upon the information found in the Rule 26(f) report. If the parties are in agreement with the discovery schedule outlined herein, no report need be filed unless there are objections to the initial discovery disclosures.

3. Within 14 days after the conclusion of their Rule 26(f) conference, the parties shall provide the initial disclosures detailed in Fed.R.Civ.P. 26(a)(1). Any objections to the initial discovery disclosures required by Fed.R.Civ. 26(a)(1) shall be clearly raised in a Rule 26(f) report.

4. The following discovery and trial schedule shall be considered by the parties in their deliberations at their discovery conference:

A. All discovery shall be completed on or before 65 days after Order.

B. All motions for summary judgment, shall be filed on or before 2 weeks after A above;

C. All motions *in limine* (other than motions objecting to initial disclosures) shall be filed on or before 2 weeks after A above;

D. All expert witnesses shall be identified and a copy of each expert's report shall be provided to every other party, in accordance with Fed.R.Civ.P. 26(a)(2) on or before 1 week after B & C .

E. All discovery disclosures pursuant to Fed.R.Civ.P. 26(a)(3) shall be served on opposing parties and filed with the bankruptcy court on or before 1 week after B & C.

F. Any objections to the Rule 26(a)(3) disclosures shall be served on opposing counsel and filed with the Bankruptcy Court on or before 2 weeks after E.

G. On or before 30 days after F above, the parties shall file a joint pretrial statement and file a copy with chambers. The joint pretrial statement shall be signed by all counsel. It is the obligation of the plaintiff's counsel to

initiate the procedures for its preparation and to assemble and submit the proposed pretrial statement to the court. Plaintiff's counsel shall submit a proposed joint pretrial statement to defendant's counsel not less than 7 days prior to the deadline for its submission.

Counsel are expected to make a diligent effort to prepare a proposed pretrial statement in which will be noted all of the issues on which the parties are in agreement and all of those issues on which they disagree. The proposed pretrial order shall govern the conduct of the trial and shall supersede all prior pleadings in the case. Amendments will be allowed only in exceptional circumstances and to prevent manifest injustice.

The joint pretrial statement shall be in the following form:

- I. Basis of jurisdiction. (including a statement whether this matter is core or non-core). If the matter is noncore, the parties shall state whether they consent to the court's entry of a final order pursuant to 28 U.S.C. § 157(c)(2). If the parties disagree, they shall each cite to relevant authority to support their positions.
- II. Statement of uncontested facts.
- III. Statements of facts which are in dispute. [No facts should be disputed unless opposing counsel expects to present contrary evidence on the point at trial, or genuinely challenges the fact on credibility grounds.]
- IV. Damages or other relief. A statement of damages claimed or relief sought. A party seeking damages shall list each item claimed under a separate descriptive heading, shall provide a detailed description of each item and state the amount of damages claimed. A party seeking relief other than damages shall list the exact form of relief sought with precise designations of persons, parties, places and things expected to be included in any order providing relief.
- V. Legal issues presented and the constitutional, statutory, regulatory and decisional authorities relied upon. (Counsel should include a brief statement regarding which party has the burden of proof on each legal issue.)
- VI. Witnesses listed in the order they will be called along with a brief statement of the evidence the witness will give. Witnesses shall be classified between those who any party expects to present and those whom any party may call if the need arises. If not already provided to all parties, the address and telephone number of each witness shall be disclosed.

VII. A list of all exhibits to be offered into evidence which shall be serially numbered and physically marked before trial in accordance with the schedule. Documents which a party may offer if the need arises shall be separately identified.

VIII. A list of each discovery item and trial deposition to be offered into evidence. (Counsel shall designate by page portion of deposition testimony and by number the interrogatories which shall be offered in evidence at trial.)

IX. Estimated trial time

X. A certification that the parties have attempted good faith settlement discussions without success.

5. No pretrial conferences with the Court will be scheduled unless one is requested by counsel or the Court deems it necessary.

6. Trial will be held on _____ 2001, 1:30 P.M. in Bankruptcy Courtroom No. 4, Second Floor, Robert C. Nix Courthouse, 900 Market Street, Philadelphia, Pennsylvania 19107. The trial may be continued only in exceptional circumstances with the permission of the Court.

By the Court:

STEPHEN RASLAVICH
United States Bankruptcy Judge

Counsel for Plaintiff:

Counsel for Defendant:

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Nancy Mulvehill, Courtroom Deputy to Judge Raslavich